

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DONALD ALFORD LOFTON,

Plaintiff,

v.

Case No. 19-CV-1813

**BRIAN FOSTER, JOHN DOE
and JANE DOE,
Defendants.**

ORDER

On February 10, 2020, District Judge Lynn Adelman screened Lofton's complaint and allowed him to proceed on an Eighth Amendment claim against John Doe and Jane Doe, who were correctional officers at Waupun. (ECF No. 8.) Because there were no named defendants, the court kept Warden Brian Foster in the case for the sole purpose of identifying the Doe defendants. Lofton was instructed to use discovery to identify the names of the officers and, once he identified them, to file a motion to substitute the real names for the Doe placeholders within 45 days after Warden Foster's attorney filed an appearance.

Lofton failed to do so, and this court issued an order on April 27, 2020, giving him until May 18, 2020, to identify the Does or explain why he was unable to do so. (ECF No. 14.) On May 12, 2020, Lofton filed a letter explaining that he never received the screening order and was unaware of the deadlines. (ECF No. 17.) The next day, the court, via text only order, extended the deadline for Lofton to name the Doe defendants to June 1, 2020. (ECF No. 18.) On May 15, 2020, Lofton filed a motion for

extension of time to identify the Doe defendants (ECF No. 19.). Then, on May 29, 2020, Lofton filed a motion to amend the complaint to add the Doe defendants' names in the pertinent parts of his original complaint. (ECF No. 22.)

Regarding Lofton's motion for extension of time to identify the Doe defendants, it appears that it was mailed around the same time the court entered the text only order extending the date to respond. Because Lofton filed his motion to amend the complaint before the new due date of June 1, 2020, the motion for extension of time is moot.

Turning to Lofton's motion to amend his complaint, the court will construe it as a motion to substitute the real names of the Doe defendants. Lofton identifies Correctional Officer Maitland as the John Doe defendant and Sgt. Barrett as the Jane Doe defendant. But for the addition of the names of the Doe defendants, the allegations in the amended complaint are identical to those in the original complaint. As such, Lofton's motion is more appropriately a motion to substitute the names of the John and Jane Doe defendants. The complaint does not need to be rescreened, and the original complaint (ECF No. 1) remains the operative complaint.

Lofton's motion to substitute the real names of the Doe defendants is **GRANTED**. (ECF No. 22.) The Doe placeholders shall be replaced with Correctional Officer Maitland and Sgt. Barrett. The clerk's office will update the docket to reflect this substitution.

IT IS FURTHER ORDERED that Warden Brian Foster is **DISMISSED** from the case.

IT IS FURTHER ORDERED that, pursuant to an informal service agreement between Wisconsin Department of Justice and this court, copies of plaintiff's complaint (ECF No. 1), the screening order (ECF No. 8), and this order are being electronically sent today to Wisconsin Department of Justice for service on Officer Maitland and Sgt. Barrett. They should file a pleading responding to the complaint within sixty days of receiving electronic notice of this order.

IT IS FURTHER ORDERED that the parties may not begin discovery until after the court enters a scheduling order setting deadlines for discovery and dispositive motions.

IT IS FURTHER ORDERED that Lofton's motion for extension of time to identify the Doe defendants is **DISMISSED as moot**.

Dated at Milwaukee, Wisconsin this 6th day of June, 2020.

BY THE COURT



WILLIAM E. DUFFIN
United States Magistrate Judge